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10/521,146

01/13/2005

Klaus-Dieter Hammer

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EXAMINER

KASHNIKOW, ERIK

ART UNIT

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1794

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/521,146 | Applicant(s) HAMMER ET AL. | |
| | Examiner ERIK KASHNIKOW | Art Unit 1794 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 6 and 11 recites the limitation "an inner side" in the first line. There is insufficient antecedent basis for this limitation in the claim. It is examiners opinion that in light of the amendment of 01/31/2008 the claims should read "the" inner side, in order to have proper antecedent basis.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-9 and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (EP 0 190 630) in view of Krallmann et al. (CA 2,292,983).
5. In regards to claims 1, 2, 14 and 15 Smith teaches that a preferred antimicrobial agent for use in sausage casings are lower alkyl (C₁-C₇) esters of p-hydroxybenzoic acid (page 13 middle paragraph).
6. In regards to claims 3-5 and 16 Smith teaches that propylene glycol can be added to the liquid used to pre-moisturize the foodstuff casing (last paragraph page 11

first paragraph page 12) While Smith is using this compound as a plasticizer the compound still retains its water reducing antimicrobial properties.

7. In regards to claims 6 and 7 Smith teaches that carboxy methyl cellulose, a derivative of cellulose may be added to the interior walls to act as a low temperature peeling aid (page 19 bottom paragraph).

8. In regards to claims 8 and 17-19 Smith teaches a process for production of foodstuff casings in which the casing is premoistened with a solution that contains an effective amount of the antimicrobial agent. The effective amount is defined as 0.2-0.5% by weight of the liquid (page 9 first paragraph). Smith also teaches that in the preferred embodiment of the invention, that propylene glycol is present in amounts of 0-10% by weight of the liquid (page 9 first paragraph). This gives a range of 0.2-10.5% for the antimicrobial agents which completely covers Applicant's range.

9. In regards to claim 9 Smith teaches in his examples that the solutions are applied in one aqueous step (pages 20-23). This step involves soaking the casings in a bath, which would cause the coating to go on to both the inner and outer surface.

10. In regards to claims 13 and 20 Smith teaches that his invention relates to ready to fill pre-moistened food casings with an antimicrobial nature and specifically points out the fact that sausage casings may be made this way (page 10 bottom paragraph).

11. While Smith teaches a casing which uses the antimicrobial agent used by Applicant they are silent regarding the use of polyamide layers.

12. Krallmann et al. teach multilayer polyamide-based tubular film conditioned in ready to fill form (page 1 first paragraph).

13. In regards to claim 1 Krallmann et al. teach that the inner and outer surface of their tubular film are comprised of polyamides (page 3 lines20-22), and that the film includes an antimicrobial agent (page 3a line 13). Krallmann et al. further teach that the polyamide layers can absorb 6% weight of an aqueous solution (example 2).

14. One of ordinary skill in the art at the time of the invention would be motivated to modify the casing of Smith with the casing of Krallmann et al. because the casing of Smith which has the ability to be stored indefinitely without the formation of molds would benefit from the ability to retain elevated consistency in diameter during the filling process and reliable machinability of the casing of Krallmann et al (page 3 lines15-17).

15. Claims 10, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (EP 0 190 630) in view of Krallmann (CA 2,292,983) in further view of Quinones (US 6,183,826).

16. As stated above Smith and Krallmann et al. teach a ready to fill foodstuff casing, which contains an antimicrobial agent as well as carboxy methyl cellulose added to the interior walls. However Smith and Krallmann et al. are silent regarding spraying the solution containing the antimicrobial agent onto the foodstuff casing.

17. In regards to claims 10 and 11 Quinones et al. teach that it is common in the art to coat the casings, especially the inner side of the casing, using a spray during the shirring process (column 7 line 54 – column 8 line 9).

18. It would be obvious to one of ordinary skill in the art at the time of the invention to modify the method of producing casings of Smith and Krallmann et al. with the method

involving spray of Quinones et al. because it provides an economical and fast way to lubricate the casing and to promote high speed shirring (column 2 lines 5-11).

Response to Arguments

19. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection. However given that some of the prior art is still utilized against the present claims, applicants arguments regarding Smith and Quinones are addressed below.

20. In response to Applicant's claim that the references do not disclose coating the inside or the inside and outside of the casing with the antimicrobial agent, Examiner points out that the examples of Smith et al. teach a step wherein the antimicrobial material is applied by soaking the casings in a bath, which would coat both the inside and outside of the casing.

21. In response to Applicant's argument regarding the fact that Smith does not teach polymer based plastic foodstuff casing as presently claimed, Examiner agrees that Smith is silent regarding this argument, however this is why Smith is now used in combination with Krallmann which teaches polyamide foodstuff casing in order to produce a casing with consistency in diameter during filing and reliable machinability

22. In response to Applicant's argument that Quinones does not teach a polymer based plastic foodstuff, Examiner again agrees and points out that this reference is a teaching reference. While Quinones does not disclose all the features of the present claimed invention, it is used as a teaching reference, and therefore, it is not necessary

for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, and in combination with the primary reference, discloses the presently claimed invention. If the secondary reference contained all the features of the present claimed invention, it would be identical to the present claimed invention, and there would be no need for secondary references.

23. In regards to applicant's argument that Smith, Krallmann et al, and Quinones do not teach spraying during the shirring process, Examiner points out that while Quinones is silent regarding antimicrobial agents being applied by spraying during a shirring process, Quinones does teach that it is well known in the art to moisten the casing during the shirring process as well as to include various additions to the aqueous solution which is sprayed onto the casing (column 7 line 54-67). It would be obvious to one of ordinary skill in the art at the time of the invention to include the antimicrobial additive in this sprayed aqueous composition because it would cut down on the number of steps, offering a time and economical benefit to the method.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Erik Kashnikow
Examiner
Art Unit 1794

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1794